

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590**

Locomotive Engineer Review Board

Review and Determinations
Concerning Norfolk Southern Company's
Revocation of Mr. A. R. Jones's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-42

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Norfolk Southern (NS) to revoke Mr. A. R. Jones's locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 C.F.R. Part 240). The Board hereby denies Mr. Jones's petition because it was filed after the regulatory deadline set forth in 49 C.F.R. § 240.403(d).

Background

On May 6, 2010, at approximately 9:30 a.m., while operating Train Symbol I18PA05, Petitioner allegedly failed to stop and flag at highway-rail grade crossing Fitzgerald Road, Milepost 244.3. The Petitioner went on duty on the Piedmont Division, Danville District, and received a set of bulletins that contained a mandatory directive to stop and flag at Fitzgerald Road, due to an activation failure of the signals. A hearing was held by NS on May 20, 2010 and the railroad revoked Petitioner's certification by letter dated May 28, 2010.

By petition postmarked October 6, 2010 Petitioner requested that FRA review NS's decision to revoke his certification. Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to NS on October 21, 2010, and NS was afforded an opportunity to comment. A timely response was filed by NS on December 7, 2010.

Board's Determination

Based on its review of all of the information submitted, the Board has determined that:

- (1) Petitioner's certificate was revoked by letter dated May 28, 2010.
- (2) Petitioner's appeal of NS's revocation decision was post marked October 6, 2010.
- (3) 49 C.F.R. § 240.403(d) states that "[a] petition seeking review of a railroad's

decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion: (1) Provided the request for extension is filed before the expiration of the period provided in this paragraph (d); or (2) Provided that the failure to timely file was the result of excusable neglect."

- (4) 49 C.F.R. § 240.7 defines "file, filed, and filing" to mean "submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date the mailing was completed." See 67 Fed. Reg. 22 (January 2, 2002). Because the petition involved in this case was mailed after September 4, 2001, it must have been mailed within 120 days of the date that Petitioner's certification was revoked to be considered timely by the Board.
- (5) Petitioner's certification was revoked on May 28, 2010; therefore, the petition had to be postmarked by September 25, 2010, which is 120 days after the date of revocation. Instead, the petition was postmarked October 6, 2010, which is 131 days after the date of the railroad's revocation decision and eleven days longer than the regulation allows. As noted above, § 240.403(d) allows for an extension of the time period if Petitioner shows good cause for the extension. Petitioner has not offered any explanation for the delay in filing his petition; therefore, the Board finds that the petition was untimely filed.

Conclusion

Based on the findings noted above, the Board hereby denies as untimely Mr. Jones's petition for review in accordance with the provisions of 49 C.F.R. Part 240.¹ As the Board finds that this petition must be denied as untimely, the Board need not address the other issues raised by Petitioner.

Issued in Chicago, IL on MAR 24 2011



Richard M. McCord

¹ Please be advised that a party aggrieved by a Board decision to deny a petition as untimely has the option to file an appeal with the Administrator in accordance with 49 C.F.R. § 240.411. The appeal must be filed with the Federal Railroad Administrator, 1200 New Jersey, S.E., Washington, DC 20590 within 35 days of issuance of the Board's decision.

Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2010-42

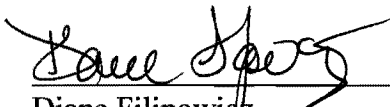
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. A. R. Jones
540 Acorn Oaks Drive
Salisbury, NC, NC 28149-9148

Mr. Jimmy Strickland
Assistant General Chairperson
UTU, General Committee of Adjustment, Southern Lines
427 West Broadway Avenue
Maryville, TN 37801

Mr. Jeremy D. Moore
Director of Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, VA 23510-1728



Diane Filipowicz
Administrative Assistant

MAR 24 2011

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2010-42

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. A. R. Jones
540 Acorn Oaks Drive
Salisbury, NC, NC 28149-9148

EQAL 2010-42

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 4459

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes**SENDER: COMPLETE THIS SECTION**

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Jimmy Strickland,
UTU, Assistant General Chairperson
427 West Broadway Avenue
Maryville, TN 37801

EQAL 2010-42

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 4466

PS Form 3811, February 2004

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102595-02-M-1540

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Jeremy D. Moore
Director of Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, VA 23510-1728

EQAL 2010-42

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 4473

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes